



# THE ATTORNEY GENERAL OF TEXAS

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ATTORNEY GENERAL

AUSTIN, TEXAS 78711

July 27, 1967

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
State Capitol  
Austin, Texas

Opinion No. M-110

Re: Whether devise and bequest  
to a Cemetery Association  
is exempt from inheritance  
tax.

Dear Mr. Calvert:

In your letter requesting the opinion of this Office on the above captioned matter, you **included** a copy of the articles of incorporation of the Cemetery Association in question. This charter recites that the corporation is to be formed pursuant to the provisions of Article 1121, subdivision 5, Acts 1897, p.188, P.D. 5935. Article 1121 enumerated specific purposes for which corporations could be created at the time the charter was granted on October 4, 1925. Subdivision 5 reads as follows: "The maintenance of a public or private cemetery or crematory." There is no charter provision which requires perpetual care. This opinion does not pass upon the taxability of gifts to **such cemetery associations as have established perpetual care trust funds pursuant to the provisions of Article 912a-15, Vernon's Civil Statutes**, which provides that perpetual care trust funds are "expressly permitted and shall be and be sic deemed to be for charitable and eleemosynary purposes."

If this devise and bequest is exempt from inheritance taxes, it must come within the provisions of subdivision (2) of Article 14.015, Taxation-General, Vernon's Civil Statutes, which enumerates exempt transfers. Subdivision (2) of Article 14.015 reads as follows:

"(2) Religious, Charitable and Educational Organizations. Property passing to or for the use of charitable, educational, or religious societies or institutions, incorporated, unincorporated, or in the form of a trust, provided that no part of

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the net earnings of any such organization inures to the benefit of any private shareholder or individual."

Specifically, the Cemetery Association could qualify for exemption only if it be deemed a "charitable" corporation. We are of the opinion that it cannot.

Section 2 of Article 1121 provided that corporations might be created for "the support of any benevolent, charitable, educational or missionary undertaking." Had the Legislature deemed that "a public or private cemetery or crematory" was embraced within the provision for charitable undertakings, it would not have deemed it necessary to add the fifth subdivision, above quoted. Further, as aforesaid, the Legislature did deem it necessary to declare in Article 912a-15 that perpetual care trust funds shall be deemed for charitable purposes.

Another provision of our Constitution and of the statutes illustrates the same distinction. Article VIII, Section 2 of the Constitution authorizes the Legislature to exempt certain classes of property from ad valorem taxes. It reads, in part, as follows:

"... but the legislature may, by general laws, exempt from taxation public property used for public purposes; . . . places of burial not held for private or corporate profit; . . . and institutions of purely public charity; and all laws exempting property from taxation other than the property above mentioned shall be null and void."

Pursuant to this Constitutional authorization, the Legislature enacted Article 7150, Vernon's Civil Statutes. Section 7 of Article 7150 reads as follows:

"All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its

aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its laws to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons."

Section 3 of Article 7150 reads as follows:

"3. Cemeteries. — All lands used exclusively for graveyards or grounds for burying the dead, except such as are held by any person, company or corporation with a view to profit, or for the purpose of speculating in the sale thereof."

The above quoted portions of Section 2 were adopted in 1876. Had the framers of the Constitution considered places of burial not held for private or corporate profit institutions of purely public charity, it would not have been necessary to provide a separate authorization for the exemption thereof. Pursuant to this separate specific authorization, Section 3, above quoted, was enacted.

We realize that what may be deemed "charitable" for the method or purpose of creating a corporation or for the purpose of obtaining an exemption from ad valorem taxes is not necessarily determinative of what may be deemed "charitable" for the purposes of obtaining an exemption from inheritance taxes. However, courts in other jurisdictions have been influenced by similar differentiations in determining the taxability for succession tax purposes of devises and bequests to cemetery corporations. Re Hill, 160 Atl. 916 (Me.Sup. 1932), held that a cemetery association could not be regarded as a charitable institution within the meaning of a statute exempting from inheritance tax legacies to or for the use of charitable institutions, where the Legislature, by providing that cemetery corporations shall be organized as charitable corporations and by specifically exempting them from taxation notwithstanding a general exemption of benevolent and charitable institutions, had indicated that it does not view them as falling within the category of charitable institutions. This case recognizes that some cases have allowed as an exemption payments for the improvement, care, and upkeep of a family burial plot and for the erection

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of monuments thereon, provided the testator himself is to be buried therein; but these cases are grounded on the proposition that directions to place monuments on a family burial ground where the testator directs or expects that he will be buried, may be granted an exemption under a liberal interpretation of a deduction allowed for funeral expenses. Under the facts as presented to this Office, obviously the devise and bequest to the Cemetery Association cannot be treated as a funeral expense of the decedent.

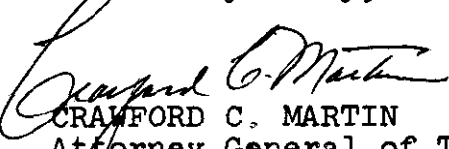
Re Hill is annotated in 83 A.L.R. 931 in an Annotation entitled "Exemption from succession tax in respect of bequests or expenditures in connection with cemetery and burial." This Annotation cites a number of cases. Bullock v. Commissioner of Corporation & Taxn., 156 N.E. 743 (Mass.Sup. 1927), held that a gift to a cemetery corporation for erecting a chapel in which to hold burial services was not exempt from succession tax as being for a charitable purpose since burial services would be held for members or lot owners only. Cf. Re Beekman (1921), 232 N.Y. 365, 134 N.E. 183 (reversing (1921) 196 App.Div. 681, 188 N.Y.Supp. 178, which reversed (1920) 114 Misc. 73, 186 N.Y.Supp 674) where the testator gave all of his residuary estate, amounting to nearly \$1,000,000 to the Beekman Family Association. Contra: Bushong v. Taylor, 33 S.W.2d 80 (Tenn.Sup. 1930).

For all the foregoing reasons, the devise and bequest to the Cemetery Association in question is subject to an inheritance tax.

#### SUMMARY

Under submitted facts a devise and bequest to the Cemetery Association in question is subject to an inheritance tax.

Yours very truly,

  
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MMP:ms

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APPROVED:

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